THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :1785 OF 2007

DATED:27-02-2007

BETWEEN:

Dr.S.Venkata Rao.

..... PETITIONER

AND

The Government of Andhra Pradesh,
Department of Revenue (Excise) Department,
Rep., by its Commissioner of Prohibition & Excise,
Excise Buildings,
Hyderabad & 3 others.

.....RESPONDENTS

ORDER:

Heard the learned counsel for the petitioner as well as the learned Government Pleader for Home appearing for the respondents.1 to 3, and the learned counsel appearing for the 4th respondent.

2. Petitioner seeks a writ of mandamus declaring the inaction of the respondents in considering the written objections with regard to grant of permission in favour of the 4th respondent to establish a Bar and Restaurant styled as 'M/s Swarna Bar & Restaurant' in the premises at D.No.77-22-1/7 and 77-22-1/7-A, situated at Alluri Seetharamaraju Street, Prakashnagar, Vijayawada-15, as illegal, and arbitrary.

3. It is the case of the petitioner that he and others have made a written complaint before the respondents 1 to 3 with a request not to grant any licence to the 4th respondent since the premises selected by the 4th respondent at D.Nos.77-22-1/7 and
77-22-1/7-A, situated at Alluri Seetharamaraju Street, Prakashnagar, Vijayawada-15, is situated within 500 meters of the predominantly residential area, and also within 50 meters from the hospital situated at Door No.77-22-1/8 opened by the petitioner for children and women who are suffering from mental disorder and gynic problem. It is further stated that already one Bar and Restaurant by name 'Sri Durga Bar and Restaurant' is situated in the said area contrary to the Rule 6(1) (iii) of the A.P.Excise (Grant of Licence of Selling by Bar and

Conditions of Licence) Rules 2005 (for brevity, 'Bar Rules'). Though written representations, dated 06-10-2006, 01-11-2006, and 20-12-2006, have been made before the respondents 1 to 3 they are not considering and disposing of the same. Hence, the petitioner is constrained to file the present Writ Petition.

4. Counter has been filed by the 3rd respondent stating that the 4th respondent has obtained prior clearance from the 1st respondent-Commissioner of Prohibition & Excise as required under the Bar Rules to consider the application for grant of licence in Form2-B (Bar licence), along with the rental agreement from the owner of the premises bearing Nos.77-22-1/7 and 77-22-1/7-A. It is stated that under Rule 6(1) (ii) of the said Bar Rules, bar licence shall not be granted within the prohibited distance of 100 meters from the Educational Institutions recognized by the Government, places for public worship, such as temples registered by the Endowments Department, Mosques registered with the Wakf Board, Churches and hospitals. Hospital has been defined as: any hospital managed or owned by the local authority, state Government or Central Government or any other private hospital having the provision of atleast thirty (30) beds.

5. Admittedly, the case of the petitioner is that he is having only ten bed hospital and not thirty bed hospital and therefore, the only objection available is that the said premises is situated within 500 meters of predominantly residential area under Rule 6(1)(iii) of the Bar Rules. However, the said restriction of 500 meters from the predominantly residential area can be relaxed if the said proposed premises is located on the main road used for shopping purpose.

Therefore, it is for the Prohibition & Excise Superintendent, who has authority to recommend the case of the 4th respondent, to consider the objection of the petitioner, and others, and submit a report as to whether the location selected by the 4th respondent is situated on the main road used for shopping purpose. If it is on the main road, even if the area is used for shopping purpose I am of the opinion that the restriction of 500 meters of predominantly residential area applies. Even if the existing Bar is situated within 500 meters of predominantly residential area and if it is not located on the main road used for shopping purpose, action requires to be taken against the existing Bar also. It is stated that no licence has been granted so far and report from the concerned Prohibition & Excise is yet to be received.

6. Having regard to the facts and circumstances of the case, the 3rd respondent is directed to make a personal enquiry and verification, after submission of a report by the concerned Prohibition & Excise Inspector, before sending the recommendation to the Commissioner, Prohibition & Excise for grant of licence in favour of the 4th respondent keeping in view the aforesaid observations and specifically indicate in his recommendation as to whether the location of the existing Bar as well as the proposed Bar of the 4th respondent are situated within 500 meters of the predominantly residential area and whether both the premises fulfill the restrictions of Rule 6 of the said Bar Rules. The 3rd respondent shall complete the aforesaid exercise within two weeks from the date of receipt of a copy of this order.

7. Accordingly, the writ Petition is disposed of. No order as to costs.

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V.ESWARAIAH,J

27th February, 2007.

Note:

Furnish C.C. of the order within two days

B/o

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